IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.4424 OF 2003
IN
CRIMINAL APPEAL NO.672 OF 1989

The State of Maharashtra .. Applicant

v/s.

Bhoju @ Bhajanlal Jethanand Aswani
& ors. .. Respondents

Smt.V.R.Bhonsale, Addl.Public Prosecsutor for the applicant.

Mr.Ganesh Gole for respondent Nos.1,3 to 5.

CORAM : R.M.LODHA AND
R.S.MOHITE, JJ.

DATED : 13th January, 2005

P.C.

Heard Smt.V.R.Bhonsale, the learned Addl. Public Prosecutor and Mr.Ganesh Gole, the learned counsel for the respondent Nos.1 and 3 to 5.

Respondent No.2 is reported to be dead.

2. The criminal appeal came to be dismissed on 28th July, 2003 by the following order:-

> "When this matter was called out it was noticed that it is placed before Division Bench because appeal against acquittal is also filed. Ms.Usha Kejariwal, APP submits that this has been assigned to Mr.Singhal though initially it was assigned to her. It is thereafter assigned to Mr.Singhal. He is not present when the matter is called out. Both the appeals are dismissed for want of prosecution."

3. By this application it is prayed that delay in filing the criminal restoration application be condoned and criminal appeal be restored. The delay in filing the criminal restoration application appears to have occurred due to lack of diligence on the part of the concerned office clerk in the office of the Public Prosecutor. There is no challenge to this aspect by the respondent Nos.1 and 3 to 5 since no reply affidavit has been filed.

4. As regards non-appearance of the Additional Public Prosecutor, it is stated that on 28.7.2003 the concerned Additional Public Prosecutor left the office in the afternoon as his wife had fallen sick. This statement made in the application has not been traversed by respondent Nos.1 and 3 to 5.

5. We are, thus, satisfied that the delay in making criminal restoration application belatedly deserves to be condoned and the criminal appeal deserves to be restored. Order accordingly.

6. Criminal application stands disposed of.

(R.M.LODHA, J.)

(R.S.MOHITE, J.)